WA 261/2006
BEFORE
THE HON'BLE MR. JUSTICE P.G. AGARWAL
THE HON'BLE SMT. JUSTICE A. HAZARIKA
IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARU NACHAL PRADESH)

W.A. No. 261/2006

Dr. Mani Ram Kalita.
S/o- Sri Dhaneswar Kalita,
Village-Khalaibari,
P.O.-Khetri, Dist-Kamrup, Assam.

Appellant

-Versus-

1. The State of Assam,
Represented by the
Secretary to the Government of Assam,
Education Department, Dispur, Ghy-6.

2. The University Grants Commssion,
represented by its Secretary.

3. The State Selection Board,
Kahilipara Road, Jatia,
Bye-lane No.3, Dispur, Guwahti-6.

4. The Director of Higher Education,
Assam, Kahilipara, Guwhati.

5. Sir Dinesh Baishya,
S/o- Late Bali Ram Baishya,
R/o- Ananda Nagar,
Six Mile, Guwahti-781022.

6. Sri Bibekananda Sarma,
S/o- Late Abhayananda Sarma,
R/o- Jyotinagar,
P.O.- Golaghat- 785621, Assam.

7. Dr. Bhubaneswar Bora,
S/o- Late Satram Bora,
R/o- Pandav Nagar,
Adabari, Guwahti-781012, Assam.

8. Dr. Trailokya Nath Saloi,
S/o- Late Surya Kt. Saloi,
R/o- Bidyapur,
P.O. & P.S.- Nalbari, Assam.

9. Dr. Paresh Nath Sarmah,

R/o-Nalbari,
P.O. & P.S.- Nalbari, Assam.

10. Dr. Rabin Sarma,
S/o- Bhairab Ch. Sarma,
R/o-Kumarpara, Bharalumukh,
Dist- Kamrup, Assam.

11. Dr. Bharat Kalita,
Lecturer, B.P.C. College,
Nagarbera, Dist-Kamrup, Assam.

12. Dr. Provash Das,
S/o- Late Judhisthir Das,
P.O.- Chapar, Dist- Dhubri, Assam.

Respondents.

B E F O R E

THE HON'BLE MR. JUSTICE P.G. AGARWAL
THE HON'BLE SMT. JUSTICE A. HAZARIKA

For the appellant : Mr. S. S. Goswami,
Mr. I. Choudhury,
Mr. A.M. Bujarbarua
Mr. D. Sarma, Advocates.

For the respondent : Mr. A. M. Majumdar, Sr. Advocate.
Mr. M.U. Mondal.
Mr. M.K. Choudhury, Senior Advocates, S.C. Education Depttt.
Mr. U. Bhuyan
Mrs. M. Das, Advocates.

Date of hearing & judgment : 15.02.2007

JUDGMENT AND ORDER (ORAL)

(Agarwal J)

Heard Mr. S. S. Goswami, Mr. I. Choudhury, Mr. A.M. Bujarbarua and Mr. D. Sarma learned counsel appearing on behalf of the appellant. We have also heard Mr. A. M. Majumdar, learned Senior Advocate assisted by Mr. M.U. Mondal, Mr. M.K. Choud hury, learned Senior Advocate, Mr. U. Bhuyan and Mrs. M. Das, learned counsel ap pearing for the respondents.

2. The matter relates to the selection for appointment to the post of Principals of Deficit Government Aided Colleges in the state of Assam. Pursua nt to the advertisement dated 2.3.2003 issued by the State Selection Board, a se lect list of 287 candidates was published in the Gazette dated 26.2.2004. The

said selection list was challenged in various writ petitions on the ground that the advertisement was not in accordance with the rules and the validity of the s election list has expired, number of posts for which selection was made has alre ady been filled up and the list has got exhausted etc &etc. There were interim or ders in some of the writ petitions staying the operation of the selection list. Subsequently, these interim orders were modified and altered also. A dispute was also raised regarding the UGC norms etc. in the matter of selection. A batch of writ petitions, -- W.P. (C) No.2833/03 and others were disposed of by this Cour t vide order dated 28.9.05 and this Court accepted the subsequent qualification/ eligible criteria, issued by the concerned authorities and held that the notific ation was in accordance with the Rules.

3. The present appeal has been preferred against the judgment and o rder passed by the learned Single Judge dated 19.6.06 in WP(C) No.819/06 whereby this Court accepted the contents of the respondent that in view of the order of extension passed, the select list published on 21.6.04 stands valid till 21.6.0 6. This Court further provided that the select list would be operated for furthe r period of four months from the date of the order dated 19.6.06 i.e., up to 18. 10.06. Admittedly the above date 18.10.06 is over.

4. During the course of argument, learned counsel for the appellant , submitted that the select list was for 96 candidates and already 115 candidate s, out of the select list, have been appointed as regular Principals under the D eficit Govt. Aided Colleges of Assam. The list, therefore, stands exhausted and no further appointment can be made from the said list. There is no dispute at th e Bar that so far the advertisement is concerned, the number of post was not men tioned. 96 number of posts have been estimated by the Appellants in view of Rule 10 of the Assam Education Department Selection Rules, 1981, which provides that the number of persons so selected shall be at least three times of the existing vacancies. The learned Single Judge also held that in absence of any statement in the advertisement regarding the number of vacancy, 'court is not persuaded to scuttle the selection process.'

5. In the case of Prem Singh and others vs- Haryana State Electric ity Board and others, reported in 1996 (4) SCC 319, the Apex Court held that--- If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even t hough it might have prepared a select list of more candidates. The State can dev iate from the advertisement and make appointments on posts falling vacant therea fter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts t han advertised is challenged the court may not, while exercising its extraordina ry jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

6. In the present case, we find that the concerned advertisement do es not disclose the number of posts for which it was made and hence, we are unab le to accept the contention that the number of posts for which the advertisement was issued, were 96 in number. Moreover, this is not a case of selection for ap pointment; it is a case of selection for empanelment of the teachers for the pos ts of Principal. Rule provides that the persons, who are empanelled in the selec tion list, are eligible for appointment to the post of Principal and the concern ed college is required to make selection from the said list only. However, we fi nd that altogether 115 persons have already been appointed out of the select l ist and these appointments are not under challenge before us. Learned counsel fo r the appellant was also fair enough to submit that they are not questioning the above appointments as on now.

7. The main thrust of the submission of the appellant is that the selection list, dated 21.6.04, may not be considered as a permanent list so that the appointments can be made from that selection list for all time to come or it is fully exhausted and thereby deprive those candidates, who have attained eligibility in the meantime. We find force in the above submission. Considering the chequered history and number of stay order, we provide that the selection list dated 21.6.04, which was made operative till 18.10.06 by extension order of the learned Single Judge, must come to an end and no further appointment shall be made on the basis of said selection list to fill up the existing vacancies/future vacancies. We, therefore, direct the respondent authority, the Selection Board to issue fresh advertisement in accordance with the Rules and regulations governing the matter, clearly indicating therein the number of vacancies for which advertisement is issued. The entire process of selection shall be completed and selection panel list be published within a period of four months.

8. At this stage, Mr. M.K. Choudhury, learned Senior Advocate appearing for the State respondent has further submitted that the during the life span of the selection list in as many as 17 colleges, selection for the post of Principal was made from the list dated 21.6.2004, and approval was sought by the college authorities on or before 18.10.2006, and, out of them, the Director has already issued approval letter in respect of one candidate (Dr. Rabin Sarma for Damdama College); in respect of other 16 colleges, the names of the selectees are pending before the concerned authority, i.e., Director of Higher Education, for approval. However, above candidates could not be appointed or name could not be approved in view of the interim order passed by this Court in the present writ appeal. It is therefore, submitted that these 17 candidates should not be deprived of their dues for no fault of theirs.

9. So far Damdama College is concerned, we are informed at the Bar that a separate writ petition, being WP (C) No.6131/06, is pending wherein the selection of said Dr. Rabin Sarma has been challenged on the ground of the sufficiency of the advertisement issued by the concerned college and challenging the eligibility of the selected candidate. We are also told that the selection/ appointment of Principal of Pandu College, Dr. Bhubneswar Bora is under challenge in W.A. No.308/06 wherein the challenge is regarding the selection process conducted by the concerned authorities of Pandu College.

10. Considering the facts and circumstances of the entire matter and considering that in absence of appointment of regular Principal, the education of the students in the colleges is hampered and considering that the appointment could not be made because of the interim order passed by this Court, we provide that the concerned authority i.e., the Director of Higher Education, shall consider these applications for approval in accordance with Rules and regulations in respect of sixteen colleges (as approval for Damdama college has already been issued).

11. The select list dated 21.06.2004 shall be deemed to be alive for those 16 colleges. Mr. Choudhury has specifically submitted that selection process by the respective colleges was over before 18.10.2006 and the applications for approval were received by the Director of Higher Education from that date but the same were not processed due to interim orders. We, further, provide that in case of Damdama College and Pandu College, the approval/appointment shall subject to the decisions in W.A.No.308/06 and WP(C) No.6131/06 respectively.

12. The writ appeal stands disposed of accordingly.

JUDGE JUDGE

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